

Protest of) Date: November 20, 1992
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AMR DISTRIBUTION SYSTEMS)
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Solicitation No. 104230-91-A-0176) P.S. Protest No. 92-36

ON RECONSIDERATION

The contracting officer has timely requested reconsideration of our October 2, 1992, decision sustaining AMR Distribution Systems' ("AMR") protest. AMR protested the award to New Breed Leasing Corporation ("New Breed"), alleging that its proposal was technically equal to New Breed's, yet lower priced, making its having proposal a better value to the Postal Service.

AMR's protest was sustained because this office found that the record received from the contracting officer provided no reasonable, factual basis for his conclusion that New Breed's proposal was technically superior to AMR's and was therefore the better value, even with its higher cost. Although the contracting officer stated in his report that New Breed's proposal was rated higher technically than AMR's, the record did not support that statement. Further, this office could not determine the method that the contracting officer used to adjust the technical scores assigned to the offers by the evaluation committee and the costs of the offerors.

In his request for reconsideration, the contracting officer asserts that, contrary to the understanding set out in the original decision, the award selection was made by a source selection authority ("SSA") comprised of management officials, not by the technical committee or the contracting officer. The contracting officer contends that "[t]he Source Selection Authority . . . process . . . does not require any support or other explanation of differences between its [results and results of the subsidiary evaluation panels]" and that "the fundamental error in the [d]ecision [was] the failure to determine the validity of the award made based on and utilizing the SSA procedure."^{1/}

^{1/} No postal procurement directive discusses the use of a source selection authority. The Procurement Handbook (PH), an internal guide for procurement offices, describes the use of a source selection committee. PH 2.1.7b-81 states that "[s]enior postal management may find it appropriate to participate actively in the source selection process for procurements which are sensitive because of their visibility,

The contracting officer explains that the source selection authority was made up of a larger technical panel and a smaller procurement panel. The technical panel evaluated the technical and cost proposals, participated in offeror discussions and presented the technical results to the procurement panel. The procurement panel directed the cost and preaward survey subpanels, combined the technical and procurement panels results and presented them to the source selection authority. The source selection authority was responsible for ensuring it had all the documentation necessary to select a proposal offering the best value to the Postal Service, in accordance with the solicitation criteria.

The contracting officer advises that while the technical panel gave AMR and New Breed the scores reported in the decision, as outlined in his report, the procurement panel was concerned that the technical panel's findings focused too narrowly on the physical aspects of the mailbag repair and processing functions listed in the Statement of Work. He adds that, although the proposals were less than 10 percentage points apart, the technical committee rated AMR's proposal "highly acceptable" and New Breed's proposal "low acceptable," an evaluation with which the procurement panel disagreed, concluding that AMR should be rated as the highest risk. Similarly, the procurement panel found that the technical panel's rating of New Breed's proposal was not supported by the documentation.

The contracting officer reports that neither the technical committee nor the procurement panel made recommendations to the source selection authority, but that the source selection authority reviewed everything and technically ranked offerors. Quoting Bank Street College of Education, Comp. Gen. Dec. B-213209, 84-1 CPD & 607, June 8, 1984, the contracting officer argues that the source selection authority performed its appropriate function "to exercise informed judgment and sound discretion."

The contracting officer reports that in making its decision, the source selection authority did not overlook any of the cost proposals. It selected New Breed because it found New Breed's technical superiority to outweigh New Breed's cost. Finally, the contracting officer explains that since he served a dual role, as both a member of the source selection authority and the contracting officer, he forwarded the source selection authority's decision to the Director, Office of Procurement, who concurred in the award to New Breed.^{1/}

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technical or other risk, large dollar amount, or other circumstances. In such instances, source selection occurs at a level above the contracting officer, and the decision maker is designated chairman of the source selection committee (SSC)." PH 2.1.7b-83 states that "[w]hen a SSC is designated, it should review findings of the panels for consistency with the evaluation factors, accuracy, and propriety. Generally, the SSC is not bound by the panels' findings. It has a much broader mandate and normally ranks the offerors in an order that reflects its own judgment but must adhere to the evaluation criteria of the solicitation."

^{2/} AMR submitted very brief comments stating its objection to the contracting officer's request for

Attached to the request for reconsideration are copies of various documents, not all of which were previously furnished in the contracting officer's report.^{1/} They include the following:

1. An undated "Source Selection Plan" which identifies the Program Manager, Mail Transport Equipment Division, as chairman of the Technical Evaluation Panel, indicates that the members of that panel will be chosen "prior to issue [sic] of a final solicitation," and states that "[t]he Technical Panel and the Contracting Officer will perform the evaluation and selection," assisted by specialists from the Contract Pricing Division and the Operational Equipment Procurement Division and other advisors as necessary.

2. A February 3 memorandum to file which modifies the Source Selection Plan:

The Contracting Officer is responsible for the overall conduct of the evaluation process. The Technical Panel and the Cost Panel will perform their respective evaluations Each panel will report their findings to the Contracting Officer, who will consider and report these findings to the other selection officials. In addition to the Contracting Officer, the selection officials are . . . Gary W. Litwinowitz, Mail Transportation Equipment Division (MTED); and Barry D. Brown, Operational Equipment Procurement Division (OEPD). Any and all selection officials may request updates from either or both the Technical or Cost panels, as required.

3. A February 3 memorandum from Mr. Brown to Mr. Litwinowitz which discusses the changes made to the source selection plan, noting "you and I will actively participate in the source selection process . . . and will, together with the Contracting Officer, make the final selection decision. This appointment is in keeping with the Source Selection Committee (SSC) criteria set forth in the Procurement Handbook (PH) 2.1.7 b-80, particularly in terms of the importance of the pilot test to mail transport equipment objectives within the Postal Service."

4. A March 11 memorandum from Mr. Brown to Mr. Litwinowitz advising him that Mr. Brown had assumed contracting officer responsibility for the procurement, and that the "change . . . should not hamper my role as a selecting official, since the Contracting Officer has been a selecting official all along."

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reconsideration.

^{3/} For some reason items 2, 3, 4 and 6 described below, while listed in the table of contents, were not included in the original contracting officer's report.

5. A May 8 memorandum to the file signed by Messrs. Brown and Litwinowitz (described as the Source Selection Authority) setting out the Technical Panel's scores, but concluding, contrary to those scores, "that the proposal submitted by New Breed Leasing Corporation . . . presents the best value to the Postal Service." The three-page memorandum includes glowing descriptions of New Breed's proposal, and is accompanied by narrative analyses of the four proposals related to the various evaluation factors.

6. A May 14 memorandum to the file signed by the Contracting Officer and the Procurement Specialist captioned "Summary of BAFO Evaluation, and Determinations: Reasonableness of Estimated Cost and Responsibility, Solicitation 104230-91-A-0176, Equipment Processing Center." The memorandum describes the evaluation of the offers by the technical panel, and makes various determinations with respect to price reasonableness. The document makes various references to the "SSA's" source selection determination.

Discussion

PM 4.5.7 n. states that "the contracting officer may request reconsideration of a protest decision." It further states that any "request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law or information not considered."

The contracting officer's argument that this office did not properly consider the manner in which the source selection authority process was used asserts that information previously available in the record of the protest was overlooked in the decision.

"Information not previously considered refers to that which 'a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest.'" Cummins-Allison Corporation, On Reconsideration, P.S. Protest No. 91-18, September 16, 1991; International Business Machines Corporation, On Reconsideration, P.S. Protest No. 90-66, February 22, 1991. "Thus, facts available during the course of the original protest that could have been raised at that time may not be raised for the first time during a request for reconsideration." Cummins-Allison Corporation, supra.

In the course of the initial protest, the contracting officer asserted, in defense of the source selection process, that New Breed's proposal was technically superior to that of the protester, and that its cost, as adjusted for cost realism, while higher than that of the protester, was reasonable for the superior technical value offered. Our decision faulted that defense because "we [could] not discern from the record a reasonable, factual basis for the contracting officer's conclusions."

While the documentation submitted by the contracting officer included the various documents set out above which undertook to describe the use of the source selection

authority, the contracting officer's original statement did not mention or explain the relevance of that process as the request for reconsideration does. Instead, page 3 of his contracting officer's statement asserted only that "the technical evaluation of all offers indicated that New Breed's proposal was clearly technically superior to that of the protester." That statement simply was not supported by the record. While the May 8 memorandum gave the basis for the source selection authority's decision to choose New Breed, its synopsis of the technical scores given by the technical panel showed that New Breed's proposal was ranked last technically, and the narrative evaluations failed to explain how the two signatories would have revised that technical evaluation.^{1/}

We do not believe that the initial decision was defective in overlooking the fact that the initial technical evaluation was reviewed by a source selection authority because, as discussed below, the fact of such review does not excuse the need for that body's decision to have record support. The contracting officer is incorrect in asserting that a source selection committee need not explain the differences between its conclusions and those of the subsidiary panels.

While PH 2.1.7b-83 notes that a source selection committee "[g]enerally . . . is not bound by the [technical and price] panels' findings,"^{4/} the same section notes the committee's obligation to review those findings "for consistency with the evaluation factors."

If the basis for a protested source selection committee evaluation is not clear from its decision, it behooves the contracting officer to demonstrate that basis in responding to the protest, and for the reasons set out at page 9 of the initial decision, the contracting officer cannot defend the determination on the basis that the committee need not explain itself.^{1/}

^{4/} The contracting officer's current explanation of the evaluation process seems flawed by inconsistencies. At times, the request for reconsideration defines the source selection authority as encompassing the technical panel and the procurement panel (otherwise undefined), but elsewhere its documentation indicates that the authority was comprised solely of Messrs. Brown and Litwinowitz, the signatories of the May 8 source selection memorandum.

Further, the procedure used appears to deviate from the source selection committee procedure contemplated by the Procurement Handbook, in that under that procedure, the decision-maker is a member of senior management, and that while the contracting officer may (but need not) sit on the source selection committee, the senior manager chairs the body. Here, nothing in the file suggests that either member of the source selection authority was its chair, so it is unclear that the source selection did, in fact, occur "at a level above the contracting officer." That the contracting officer was intended to retain a role in the decision-making process was further suggested by the February 3 and March 11 memoranda which reflected the continuing inclusion of the contracting officer as a participant in the final selection decision.

^{5/} In this respect, the committee is like the contracting officer, who is similarly not bound by the findings of the panels, (PH 2.1.7b-31), as our initial decision noted at page 9.

^{6/} Bank Street College of Education, Comp. Gen. Dec. B-213209, 84-1 CPD & 607, June 8, 1984, which the contracting officer cites, is not to the contrary, since it indicates that the source selection organization's decision to overrule the technical evaluators is governed by "the tests of rationality and consistency."

The request for reconsideration is denied.

For the General Counsel:

William J. Jones

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with established evaluation factors" and notes that the decision may be supported by subsequent justifications in the course of the challenge.